



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Smith Environmental Technologies Corporation

File: B-272896

Date: October 30, 1996

Richard B. Oliver, Esq., McKenna & Cuneo, for the protester.

Carol A. Cowgill, Esq., and Kenneth A. Redden, Esq., Environmental Protection Agency, for the agency.

Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably excluded protester's proposal from the competitive range on the basis that the protester had no reasonable chance of receiving award where the proposal was properly downgraded with respect to the firm's ability to meet the solicitation's response time requirements, and where proposals in the competitive range were rated superior to protester's and protester's proposed price was higher than that of two of those proposals.

DECISION

Smith Environmental Technologies Corporation protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. W400735-G5, issued by the Environmental Protection Agency (EPA) for hazardous waste and oil cleanup and removal services. Smith argues that the agency unreasonably evaluated its technical proposal.

We deny the protest.

The solicitation anticipates award of a fixed-price time-and-materials contract to a firm that will perform specific cleanup and/or removal services under individual delivery orders. The contract will cover the Emergency and Rapid Response Services (ERRS) Zone formed by three EPA regions.¹ Among other requirements,

¹Region VI includes Arkansas, Louisiana, New Mexico, Oklahoma, and Texas; Region VIII includes Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming; (continued...)

the contractor must ensure that its personnel and equipment respond to incidents within specified time limits. Relevant to this protest, the contractor must respond to incidents in the areas of Salt Lake City, Utah and Phoenix, Arizona within 6 hours.

Award will be made to the firm whose proposal is most advantageous to the government, with technical quality more important than price. Technical proposals are to be evaluated under four criteria, in descending order of importance: management; sample work plans; key personnel; and corporate work experience.

EPA received six proposals. The technical evaluation panel (TEP) evaluated each proposal and submitted a report to the contracting officer.² The proposals of two firms were determined to be technically superior, receiving overall ratings of outstanding and "outstanding minus," respectively, and the proposal of a third firm was rated acceptable overall. Smith's proposal was rated "marginal minus" overall. Specifically, under the most important evaluation factor, management, Smith's proposal received an unacceptable rating due to its unacceptable rating under one of the subfactors, management approach.³ The firm's proposal received this rating principally because the evaluators believed that it was highly improbable that Smith could meet the 6-hour response time requirement to Salt Lake City and Phoenix, leaving the government, public health, and the environment vulnerable. Smith's proposal was rated unacceptable under one of the sample work plans for this same reason.⁴

¹(...continued)

and Region IX includes Arizona, California, Hawaii, Nevada, American Samoa, the Commonwealth of the Marianas, and Guam. The contractor may also be tasked to provide response services outside of the ERRS Zone and the United States.

²One firm's offer was immediately rejected because it failed to submit a technical proposal. Another firm's offer was excluded from the competitive range along with Smith's, and is not at issue here.

³The management factor consisted of six subfactors: management approach; cost control; subcontract management; equipment; regulatory compliance assurance; and quality assurance. The first two factors were equally important and more important than the others, which were equally important.

⁴The proposal was rated "acceptable minus" overall under the sample work plans factor, and acceptable under the remaining two factors, key personnel and corporate work experience.

In her competitive range determination, the contracting officer noted that the basis for the TEP's overall determination with respect to Smith's proposal was that, although the firm had an acceptable rating in all of the other factors, if it could not get to the site in a timely manner with the required personnel and equipment, nothing else would matter materially to the cleanup of the site. The contracting officer also stated that even if Smith had received an acceptable rating overall, when she considered the technical superiority of two of the other proposals and the fact that Smith's proposal was rated third with respect to price Smith still would have no reasonable chance to receive the award. Accordingly, the contracting officer eliminated Smith's proposal from the competitive range; this protest followed. Smith challenges the agency's evaluation with respect to its ability to meet the 6-hour response time requirement.

In reviewing competitive range determinations, our Office will not independently reevaluate proposals; rather, we will examine the record to ensure that the evaluation is reasonable and in accordance with the solicitation's evaluation criteria. Mobility Sys. and Equip. Co., B-261072, Aug. 8, 1995, 95-2 CPD ¶ 66. A protester's disagreement with the agency's technical judgment does not show that such judgment was unreasonable. Id.; Micronics, Inc., B-228404, Feb. 23, 1988, 88-1 CPD ¶ 185. Our review of the record confirms that the evaluation here was reasonable.

Smith proposed to respond to actions in the Phoenix area from its Torrance, California offices some 350 miles distant. The firm stated that it would respond primarily by ground transportation, but would use commercial and pre-identified charter aircraft services as needed.

The evaluators concluded that Smith's statement that its response team would be on the road to a site within 1 hour of notification left 5 hours for the firm to arrive at the site. Turning to Smith's principal form of transportation, the automobile, the evaluators calculated that 350 miles divided by 5 hours would require Smith's response team to drive at an average speed of 70 miles per hour in order to reach Phoenix in the required response time. The evaluators believed that this was too "tight" and imprudent, considering highway safety. While Smith argues that the agency should have calculated the response time using an average speed of 65 miles per hour, even using that figure Smith would take longer than 6 hours to reach Phoenix.⁵

As for Smith's backup forms of transportation, commercial and charter aircraft, the evaluators believed that it was possible to meet the 6-hour response requirement by

⁵350 miles divided by 65 comes out to 5.38 hours. When the hour of preparation time is factored in, Smith would exceed the 6-hour response time requirement by more than half an hour.

such means, but risky. As indicated in its report on the protest, the agency was concerned that inclement weather or a high volume of airline traffic—for example, at the end of a workweek—could make it impossible for both commercial and chartered aircraft to either take off or land as scheduled. This was a critical consideration since environmental spills and accidents in the past have occurred quite frequently because of bad weather and/or at the end of the workweek. While Smith argues that crowding should not be a consideration because the Torrance airport handles only charter aircraft flights and there are multiple landing sites in Phoenix, we think the agency's concerns are reasonable, considering that all flights are subject to the air traffic control system's ability to manage the flow of traffic through limited airspace. As for Smith's statement that the Denver charter aircraft companies which it plans to use to fly to Salt Lake City are very experienced in flying in difficult weather conditions, we do not believe that such experience precludes delay. In any event, as stated above, the evaluators agreed with Smith that it is possible for the firm to meet the 6-hour response requirement, but believed that the firm could not adequately and consistently do so. We think this conclusion was reasonable.

Smith asserts that its rating under the management factor should have been marginal, and not unacceptable, based upon the weighting of the management subfactors. After the senior contracting officer reviewed the competitive range determination, she also concluded that a marginal rating under that factor would be more appropriate. However, she stated that even with this adjustment, and assuming that Smith's proposal had been rated acceptable overall,⁶ two other firms' proposals were rated outstanding and offered better prices than Smith. Thus, while Smith might be able to improve the quality of its proposal, the firm could not improve to a level of outstanding, and did not stand a reasonable chance of receiving award.

In establishing a competitive range, agencies are required to include only those firms whose proposals are determined to have a reasonable chance of receiving award. Loral Sys. Co., B-270755, Apr. 17, 1996, 96-1 CPD ¶ 241. Our Office will not disturb a determination to exclude a proposal from the competitive range unless the record shows that the determination was unreasonable. Interactive Communication Technology, Inc., B-271051, May 30, 1996, 96-1 CPD ¶ 260. Even a proposal that is technically acceptable, or good, need not be included in the competitive range when, relative to other acceptable offers, it is determined to have no reasonable chance of being selected for award. Id.; Pedus Bldg. Servs., Inc., B-257271.3 et al., Mar. 8, 1995, 95-1 CPD ¶ 135. Here, given that there were two technically superior, lower-priced proposals, the agency reasonably concluded that even with an

⁶As noted above, Smith's proposal received ratings of "acceptable minus" and acceptable on the other three technical evaluation factors.

acceptable rating overall, the protester's proposal had no reasonable chance of being selected for award. Accordingly, we see no basis to conclude that the agency improperly excluded Smith's proposal from the competitive range.

The protest is denied.

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